

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re:

BENJAMIN YVES CHADABE,

Debtor.

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Chapter 7

Case No: 12-11731-1-rel

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

First Niagara Funding, Inc. (“FNF”), through its attorneys Lemery Greisler LLC, as and for its motion for relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1), respectfully states as follows:

**JURISDICTION**

1. This Court has jurisdiction over this case and this motion, which is a core proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157(b)(2)G.

**PARTIES**

2. FNF is a New York Corporation with a place of business at 555 Patroon Creek Boulevard, Albany, New York 12206.

3. Debtor Benjamin Yves Chadabe (“Debtor”) filed his voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code in this Court on June 27, 2012.

**RELIEF REQUESTED AND BASIS THEREFORE**

4. 443 NP, Inc. (“Mortgagor”) delivered to FNF a Mortgage Note (the “Note”) dated June 26, 2006, for business purposes, wherein Mortgagor agreed to pay the amount of \$161,675.00 with interest thereon, as more particularly set forth therein (see Note, annexed as Exhibit “A” hereto).

5. In connection with the Note, Mortgagor also entered into a Building Loan Agreement (the “Agreement”) on June 26, 2006 wherein FNF agreed to advance \$50,000.00 at such times and in such amounts as Mortgagor requested for renovations of the mortgaged premises, with interest paid upon each amount advanced as described in the Note (see Agreement, annexed as Exhibit “B” hereto).

6. As security for the payment of the Note and Agreement, Mortgagor executed and delivered to FNF a Mortgage dated June 26, 2006 (the “Mortgage”) whereby Mortgagor mortgaged to FNF, its successors and assigns, the real property more particularly described therein (“Mortgaged Premises”) (see Mortgage, annexed as Exhibit “C” hereto). The Mortgage was recorded in the Albany County Clerk’s Office on June 28, 2006 in Book 5263 of Mortgages, Page 429, and the mortgage recording tax due thereon was fully paid (see id.).

7. The Mortgaged Premises consists of a single tax map parcel (City of Albany No. 65.12-4-24), and is commonly known as 443 North Pearl Street, Albany, NY.

8. As further security for payment of the Note, Mortgagor executed and delivered to FNF a General Assignment of Leases and Rents dated June 26, 2006, which was recorded in the Albany County Clerk’s Office on June 28, 2006 in Book 2848 of Deeds, Page 1137 (see Assignment of Rents, annexed as Exhibit “D” hereto).

9. FNF’s security interests were further perfected when Mortgagor executed and delivered to FNF a Security Agreement dated June 26, and by the filing of a UCC-1 financing statement with the New York State Department of State on June 29, 2006 as file no. 200606290538877 and continued on April 4, 2011 as file no. 201104045349131 (see Security Agreement and Financing Statements, collectively annexed as Exhibit “E” hereto).

10. In order to induce FNF to lend to Mortgagor the funds referenced in the Note, the Debtor and Joel Chadabe, for good and valuable consideration, each executed and delivered a Guaranty Agreement dated June 26, 2006 to FNF pursuant to which they unconditionally guaranteed payment of all amounts due to FNF pursuant to the Note (see Guaranty Agreements, collectively annexed as Exhibit “F” hereto).

11. FNF is the owner and holder of the Note, Building Loan Agreement, Mortgage, General Assignment of Leases and Rents, Security Agreement and Guaranty Agreements, and possesses all rights set forth in those documents in favor of the FNF, holder, mortgagee and/or secured party identified therein.

12. The Mortgagor failed to timely make the monthly installment of principal and interest due to FNF under the Note on January 1, 2011 and each month thereafter.

13. The Debtor and Joel Chadabe also defaulted on their obligations under their respective Guaranty Agreements as they failed to timely pay FNF any of the amounts due from Mortgagor to FNF under the Note.

14. As of August 25, 2011, there was due and owing to FNF under the Note the sum of \$157,078.38, consisting of principal of \$147,673.01 accrued interest of \$8,218.17, and late charges of \$1,037.20. Interest accrues for each day thereafter at the per diem rate of \$30.77.

15. As a result of the aforementioned defaults, FNF commenced a note action against the Mortgagor, the Debtor and Joel Chadabe on September 22, 2011 in New York State Supreme Court, Albany County, which has been stayed due to the Debtor’s filing of his bankruptcy petition.

16. As of the date of filing of the Debtors’ bankruptcy petition, FNF had a Motion for Summary Judgment pending before the Albany County Supreme Court.

17. FNF now wishes to obtain relief from the automatic stay so that it can continue its note action in State Court against non-debtor.

18. In light of these factors, FNF has shown cause for granting relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

WHEREFORE, it is respectfully requested that the Court grant the motion of First Niagara Funding, Inc. for relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1), and such other and further relief as may be just, necessary and proper.

Dated: July 23, 2012

Respectfully submitted,

/s/Peter M. Damin  
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